

REMARKS

Please amend the figures of the present application by adding Fig. 3, enclosed herewith. No new matter is being added with the addition of Fig. 3. As explained below, this Preliminary Amendment is being submitted because the United States Patent Office (USPTO) does not have a record of having received Fig. 3, even though Applicants contend that Fig. 3 was submitted with the present application.

Applicants filed the present application with the USPTO on July 18, 2003 including a return post card receipt and 5 sheets of drawings illustrating Figs. 1-5. On November 18, 2003 the USPTO mailed a Filing Receipt indicating that only 4 drawings were received, and a Notice to File Missing Parts, which noted an omission of Fig. 3 from the present application. Fig. 3 was submitted with the present application on July 18, 2003, however Applicants did not file a petition in response to the Notice to File Missing Parts because Applicants have yet to receive the return post card receipt.

The present application claims priority to U.S. Provisional Patent Application Serial No. 60/397,900 (hereinafter "provisional 60/397,900"), which is incorporated by reference in its entirety into the present application at page 1, lines 4-6. MPEP § 608.1(p) explains the USPTO policy with respect to incorporation by reference. As explained in MPEP § 608.1(p)(I)(A), applications that will issue as patents may incorporate "essential material" from a pending U.S. patent application, as long as the pending U.S. patent application does not itself incorporate "essential material" by reference. Additionally, applications that will issue as patents may incorporate "nonessential subject matter" from prior filed, commonly-owned U.S. patent applications. MPEP § 608.1(p)(I)(A). Because provisional 60/397,900 does not itself incorporate "essential material" by reference and it is commonly-owned with the present application, it may be used to incorporate "essential material" or "nonessential

subject matter" into the present application. Accordingly, the entire disclosure of provisional 60/397,900, whether "essential material" or "nonessential subject matter," is part of the present application by virtue of being properly incorporated by reference.

Newly added Fig. 3 is identical to Fig. 3 from provisional 60/397,900. Consequently, no new matter is being added to the present application by the addition of Fig. 3.

No fees are believed to be due based upon the filing of this Preliminary Amendment, however please charge any necessary fees to Deposit Account No. 50-1419.

Respectfully submitted,

MARSH FISCHMANN & BREYFOGLE, LLP

By: 

David F. Dockery
Registration No. 34,323
3151 South Vaughn Way, Suite 411
Aurora, Colorado 80014
Telephone: (303) 338-0997
Facsimile: (303) 338-1514

Date: March 23, 2004